

Provisions of Generic Drugs under Section 3(d) of Indian IP Act: What does Data from the Backward States Reveal?

Mrityunjay Kumar and Nalin Bharti

The provisions of section 3(d) of the Indian Patent Act, 1970, were designed to promote and protect the manufacturing of low cost generic medicines in the country. Along with other changes and amendments, they were assumed to benefit the states equally without taking into account the inter-state economic inequalities. The provisions were set forth to secure production of inexpensive generic drugs for easy accessibility at affordable prices across the states. The paper assumes states whose per capita net state domestic product is lower than the per capita net national product, and thus do not get full benefit of inexpensive generic drugs. The section patronises domestic generic drug manufacturers and users from coercive provisions of Trade Related Aspects of Intellectual Property Rights Agreement and foreign patent holder's aggressive monopoly price. However, it does not guarantee the availability of price effective generic drugs for the people of backward states. Hence, some states need additional attention to make the generic drugs affordable and accessible. The paper has investigated into the intra-molecular price variation of generic drugs and its impact on their affordability in backward states. It aims to find out whether all Indian states equally benefit from the IP Act, or some states are unable to reap its benefit because of the lack of proper policy measures. The analysis is based on both descriptive and analytical methods. It has applied ratio analysis with the data on per capita net state domestic product (proxy of the purchasing capacity) of selected backward states with price data of generic drugs prescribed for major death-causing diseases.

I Introduction

Despite being among the fastest growing economies (ADO, 2018) and the sixth largest economy in terms of Gross Domestic Product (GDP) (World Bank, 2017), the per capita net state domestic product (NSDP) of many backward states is smaller than many of its neighbouring countries. This is largely attributed to India's population of more than 1.3 billion (World Population Data Sheet, 2017). The country is the home of second highest number of poor people subsisting on

Mrityunjay Kumar, Research Scholar, Department of Humanities and Social Sciences, Indian Institute of Technology, Patna 801103, Bihar, Email: mrityunjay.phs17@iitp.ac.in, mrityunjaykumar779@gmail.com

Nalin Bharti, Associate Professor, Department of Humanities and Social Sciences, Indian Institute of Technology, Patna 801103, Bihar, Email: nalinbharti@iitp.ac.in, nalinbharti@gmail.com